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12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 **Scott Johnson,**

16 Plaintiff,

17 v.

18 **Ung A. Hoong**, in individual and
19 representative capacity as trustee of
20 The Hoong Chung Family Trust
21 dated April 2, 2010;

Quyen D. Chung, in individual and
representative capacity as trustee of
The Hoong Chung Family Trust
dated April 2, 2010;

Ta & Lam, Incorporated, a
California Corporation; and Does 1-
10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

22 Plaintiff Scott Johnson complains of Ung A. Hoong, in individual and
23 representative capacity as trustee of The Hoong Chung Family Trust dated
24 April 2, 2010; Quyen D. Chung, in individual and representative capacity as
25 trustee of The Hoong Chung Family Trust dated April 2, 2010; Ta & Lam,
26

27

1 Incorporated, a California Corporation; and Does 1-10 (“Defendants”), and
2 alleges as follows:

3

4 **PARTIES:**

5 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a
6 level C-5 quadriplegic. He cannot walk and also has significant manual
7 dexterity impairments. He uses a wheelchair for mobility and has a specially
8 equipped van.

9 2. Defendant Ung A. Hoong, in individual and representative capacity as
10 trustee of The Hoong Chung Family Trust dated April 2, 2010, owned the real
11 property located at or about 1650 Monterey Hwy., San Jose, California, in
12 December 2018.

13 3. Defendant Quyen D. Chung, in individual and representative capacity
14 as trustee of The Hoong Chung Family Trust dated April 2, 2010, owned the
15 real property located at or about 1650 Monterey Hwy., San Jose, California, in
16 December 2018.

17 4. Defendant Ung A. Hoong, in individual and representative capacity as
18 trustee of The Hoong Chung Family Trust dated April 2, 2010, owns the real
19 property located at or about 1650 Monterey Hwy., San Jose, California,
20 currently.

21 5. Defendant Quyen D. Chung, in individual and representative capacity
22 as trustee of The Hoong Chung Family Trust dated April 2, 2010, owns the
23 real property located at or about 1650 Monterey Hwy., San Jose, California,
24 currently.

25 6. Defendant Ta & Lam, Incorporated owned Flourishing Garden located
26 at or about 1650 Monterey Hwy., San Jose, California, in December 2018.

27 7. Defendant Ta & Lam, Incorporated owns Flourishing Garden
28 (“Restaurant”) located at or about 1650 Monterey Hwy., San Jose, California,

1 currently.

2 8. Plaintiff does not know the true names of Defendants, their business
3 capacities, their ownership connection to the property and business, or their
4 relative responsibilities in causing the access violations herein complained of,
5 and alleges a joint venture and common enterprise by all such Defendants.
6 Plaintiff is informed and believes that each of the Defendants herein,
7 including Does 1 through 10, inclusive, is responsible in some capacity for the
8 events herein alleged, or is a necessary party for obtaining appropriate relief.
9 Plaintiff will seek leave to amend when the true names, capacities,
10 connections, and responsibilities of the Defendants and Does 1 through 10,
11 inclusive, are ascertained.

12

13 **JURISDICTION & VENUE:**

14 9. The Court has subject matter jurisdiction over the action pursuant to 28
15 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
16 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

17 10. Pursuant to supplemental jurisdiction, an attendant and related cause
18 of action, arising from the same nucleus of operative facts and arising out of
19 the same transactions, is also brought under California's Unruh Civil Rights
20 Act, which act expressly incorporates the Americans with Disabilities Act.

21 11. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
22 founded on the fact that the real property which is the subject of this action is
23 located in this district and that Plaintiff's cause of action arose in this district.

24

25 **FACTUAL ALLEGATIONS:**

26 12. Plaintiff went to Restaurant in December 2018 (twice) went with the
27 intention to avail himself of its goods or services, motivated in part to
28 determine if the defendants comply with the disability access laws.

1 13. The Restaurant is a facility open to the public, a place of public
2 accommodation, and a business establishment.

3 14. Parking spaces are one of the facilities, privileges, and advantages
4 offered by Defendants to patrons of the Restaurant.

5 15. Unfortunately, although parking spaces were one of the facilities
6 specifically reserved for patrons, there were no compliant, accessible handicap
7 parking spaces available for persons with disabilities that complied with the
8 Americans with Disability Act Accessibility Guidelines during plaintiff's visits.

9 16. On information and belief, plaintiff alleges that an accessible parking
10 space once existed in the parking lot. Indeed, there was a faded International
11 Symbol of Accessibility (ISA) logo in one stall. Next to the parking stall with the
12 logo, there were faded gray diagonal lines that did not have a "NO PARKING"
13 warning in it.

14 17. The parking space has been allowed to fade so badly, though, that it no
15 longer alerts or serves persons with disabilities. What is more, there was no
16 ADA signage in front of the parking space during plaintiff's visits.

17 18. Defendants have failed to maintain in operable working condition those
18 features of facilities and equipment that are required to be readily accessible to
19 and usable by persons with disabilities at the Subject Property.

20 19. Plaintiff personally encountered these barriers.

21 20. This inaccessible facility denied the plaintiff full and equal access and
22 caused him difficulty.

23 21. The defendants have failed to maintain in working and useable
24 conditions those features required to provide ready access to persons with
25 disabilities.

26 22. The barriers identified above are easily removed without much
27 difficulty or expense. They are the types of barriers identified by the
28 Department of Justice as presumably readily achievable to remove and, in fact,

1 these barriers are readily achievable to remove. Moreover, there are numerous
2 alternative accommodations that could be made to provide a greater level of
3 access if complete removal were not achievable.

4 23. For example, there are numerous paint/stripe companies that will come
5 and stripe a parking stall and access aisle and install proper signage on rapid
6 notice, with very modest expense, sometimes as low as \$300 in full
7 compliance with federal and state access standards.

8 24. Plaintiff will return to the Restaurant to avail himself of its goods or
9 services and to determine compliance with the disability access laws. He is
10 currently deterred from doing so because of his knowledge of the existing
11 barriers. If the barriers are not removed, the plaintiff will face unlawful and
12 discriminatory barriers again.

13 25. Given the obvious and blatant nature of the barriers and violations
14 alleged herein, the plaintiff alleges, on information and belief, that there are
15 other violations and barriers on the site that relate to his disability. Plaintiff will
16 amend the complaint, to provide proper notice regarding the scope of this
17 lawsuit, once he conducts a site inspection. However, please be on notice that
18 the plaintiff seeks to have all barriers related to his disability remedied. See
19 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
20 encounters one barrier at a site, he can sue to have all barriers that relate to his
21 disability removed regardless of whether he personally encountered them).

22

23 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
24 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
25 Defendants.) (42 U.S.C. section 12101, et seq.)

26 26. Plaintiff re-pleads and incorporates by reference, as if fully set forth
27 again herein, the allegations contained in all prior paragraphs of this
28 complaint.

1 27. Under the ADA, it is an act of discrimination to fail to ensure that the
2 privileges, advantages, accommodations, facilities, goods and services of any
3 place of public accommodation is offered on a full and equal basis by anyone
4 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
5 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 6 a. A failure to make reasonable modifications in policies, practices,
7 or procedures, when such modifications are necessary to afford
8 goods, services, facilities, privileges, advantages, or
9 accommodations to individuals with disabilities, unless the
10 accommodation would work a fundamental alteration of those
11 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 12 b. A failure to remove architectural barriers where such removal is
13 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
14 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
15 Appendix "D."
- 16 c. A failure to make alterations in such a manner that, to the
17 maximum extent feasible, the altered portions of the facility are
18 readily accessible to and usable by individuals with disabilities,
19 including individuals who use wheelchairs or to ensure that, to the
20 maximum extent feasible, the path of travel to the altered area and
21 the bathrooms, telephones, and drinking fountains serving the
22 altered area, are readily accessible to and usable by individuals
23 with disabilities. 42 U.S.C. § 12183(a)(2).

24 28. Any business that provides parking spaces must provide accessible
25 parking spaces. 2010 Standards § 208. To qualify as a reserved handicap
26 parking space, the space must be properly marked and designated. Under the
27 ADA, the method, color of marking, and length of the parking space are to be
28 addressed by State or local laws or regulations. See 36 C.F.R., Part 1191, §

1 502.3.3. Under the California Building Code, to properly and effectively
2 reserve a parking space for persons with disabilities, each parking space must
3 be at least 216 inches in length. CBC § 11B-502.2 Under the California
4 Building Code, to properly and effectively reserve a parking space for persons
5 with disabilities, each such space must be identified with a reflectorized sign
6 permanently posted adjacent to and visible from each stall or space. CBC §
7 1129B.4. The sign must consist of the International Symbol of Accessibility
8 (♿) in white on a blue background. Id. It cannot be smaller than 70 square
9 inches and must be mounted so that there is a minimum of 80 inches from the
10 bottom of the sign to the parking space. Id. Signs must be posted so that they
11 cannot be obscured by a vehicle parking in the space. Id. An additional sign or
12 additional language below the symbol of accessibility must state, “Minimum
13 Fine \$250” to ensure that the space remains available for persons with
14 disabilities. Id. Another sign must be posted in a conspicuous place at the
15 entrance to the parking lot or immediately adjacent to each handicap parking
16 space, with lettering 1 inch in height, that clearly and conspicuously warn that
17 unauthorized vehicles parking in the handicap parking spaces can be towed at
18 the owner’s expense. Id. Additionally, the surface of the handicap parking stall
19 must have a profile view of a wheelchair occupant (♿) that is 36 inches by 36
20 inches. Id. And the surface of the access aisle must have a blue border. CBC §
21 1129B.3. The words “NO PARKING” in letters at least a foot high must be
22 painted on the access aisle. Id.

23 29. Here, there was a faded International Symbol of Accessibility logo in a
24 parking stall. There were faded diagonal lines that did not have a “NO
25 PARKING” warning in the area adjacent to the parking stall. There was also no
26 blue striping that outlined a parking stall and access aisle for persons with
27 disabilities.

28 30. The Safe Harbor provisions of the 2010 Standards are not applicable

1 here because the conditions challenged in this lawsuit do not comply with the
2 1991 Standards.

3 31. A public accommodation must maintain in operable working condition
4 those features of its facilities and equipment that are required to be readily
5 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

6 32. Here, the failure to ensure that the accessible facilities were available
7 and ready to be used by the plaintiff is a violation of the law.

8

**9 II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
10 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
11 Code § 51-53.)**

12 33. Plaintiff repleads and incorporates by reference, as if fully set forth
13 again herein, the allegations contained in all prior paragraphs of this
14 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,
15 that persons with disabilities are entitled to full and equal accommodations,
16 advantages, facilities, privileges, or services in all business establishment of
17 every kind whatsoever within the jurisdiction of the State of California. Cal.
18 Civ. Code § 51(b).

19 34. The Unruh Act provides that a violation of the ADA is a violation of the
20 Unruh Act. Cal. Civ. Code, § 51(f).

21 35. Defendants’ acts and omissions, as herein alleged, have violated the
22 Unruh Act by, *inter alia*, denying, or aiding, or inciting the denial of, Plaintiff’s
23 rights to full and equal use of the accommodations, advantages, facilities,
24 privileges, or services offered.

25 36. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
26 discomfort or embarrassment for the plaintiff, the defendants are also each
27 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
28 (c).)

1 37. Although the plaintiff was markedly frustrated by facing discriminatory
2 barriers, even manifesting itself with minor and fleeting physical symptoms,
3 the plaintiff does not value this very modest physical personal injury greater
4 than the amount of the statutory damages.

5

6 **PRAYER:**

7 Wherefore, Plaintiff prays that this Court award damages and provide
8 relief as follows:

9

10 1. For injunctive relief, compelling Defendants to comply with the
11 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
12 plaintiff is not invoking section 55 of the California Civil Code and is not
13 seeking injunctive relief under the Disabled Persons Act at all.

14

15 2. Damages under the Unruh Civil Rights Act, which provides for actual
16 damages and a statutory minimum of \$4,000 for each offense.

17

18 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
19 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

20

21 Dated: January 23, 2019

22 CENTER FOR DISABILITY ACCESS

23



24 By: _____

25

26 Chris Carson, Esq.
27 Attorney for plaintiff

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